

1 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
2 Including Professional Corporations
CHARLES S. DONOVAN, Cal. Bar No. 103667
3 GUYLYN R. CUMMINS, Cal Bar No. 122445
ERIC J. DiIULIO, Cal. Bar No. 301439
4 Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4109
5 Telephone: 415.434.9100
Facsimile: 415.434.3947
6 Email: cdonovan@sheppardmullin.com
gcummins@sheppardmullin.com
7 ediiulio@sheppardmullin.com

8 Attorneys for Plaintiffs

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA
11

12 Kevin Gallagher, on behalf of himself; and
Donor No. 1, individually and on behalf of
13 all anonymous donors to Free Barrett
Brown,

14 Plaintiffs,

15 v.

16 United States; Candina Heath; Robert
17 Smith; Does 1-10,

18 Defendants.

Case No.

**CLASS-ACTION COMPLAINT FOR
VIOLATION OF RIGHT TO SPEAK
AND ASSOCIATE ANONYMOUSLY
UNDER THE FIRST AMENDMENT
OF THE UNITED STATES
CONSTITUTION; THE STORED
COMMUNICATIONS ACT; AND THE
CALIFORNIA CONSTITUTIONAL
RIGHT TO PRIVACY**

DEMAND FOR JURY TRIAL

Kevin Gallagher, on behalf of himself, and Donor No. 1, on behalf of himself and on behalf of all others who are similarly situated, allege:

INTRODUCTION

1. This is a case about government agents abusing the trust vested in them by wielding their authority to settle personal scores. Defendants' conduct violated the First Amendment of the United States Constitution, the Stored Communications Act (18 U.S.C. § 2701 *et seq.*), and the privacy rights enumerated in the California Constitution (Art. I, § 1).

2. The First Amendment protects anonymity where, as here, identification and fear of reprisal would deter Constitutionally-protected conduct. In short, Mr. Gallagher established a crowd-funding campaign to support the defense of a jailed journalist because he believed that criminal charges were levied because of the anti-government views the journalist espoused, rather than the conduct he engaged in. Donor No. 1 agreed and wished to help provide the journalist with private defense counsel. To that end, Donor No. 1 made a donation to the crowd-funding campaign under the assumption that his donation would remain anonymous. Hundreds of like-minded individuals from all over in the country did the same. These anonymous donations were protected by the First Amendment.

3. The government agents responsible for the arrest and prosecution of the journalist violated the First Amendment by seeking the identities of the donors to the crowd-funding campaign, as well as the amounts of each donation. This violation began when Assistant United States Attorney Candina Heath sent a subpoena (the "WePay Subpoena") to WePay, Inc. ("WePay"), the host of the crowd-funded legal defense fund, directing WePay to send "any and all information" pertaining to the legal defense fund to Special Agent Robert Smith of the Federal Bureau of Investigation ("FBI"). The subpoena claimed that the information it requested would be used at the trial of the jailed journalist. However, the identities of, and the amounts donated by, the journalist's supporters are completely irrelevant to the charges levied against the journalist. On information and

actions are identical to actions brought under 42 U.S.C. § 1983 but for the replacement of a state actor with a federal actor. *Starr v. Baca*, 652 F.3d 1202, 1206 (9th Cir. 2011). *Bivens* applies to claims brought under the First Amendment. *Gibson v. United States*, 781 F.2d 1344, 1342 (9th Cir. 1986). The declaratory and injunctive relief sought is authorized by 28 U.S.C. §§ 2201 and 2202.

8. Venue is proper under 28 U.S.C. § 1391(e)(1) because Defendants are officers or employees of the United States who acted under color of law while taking the actions subject to complaint, Donor No. 1 resides in this district, and no real property is involved in this action. Venue is also appropriate under 28 U.S.C. § 1391(b)(2) because the WePay Subpoena was sent to Palo Alto, California and Donor No. 1 made at least one donation within this district.

9. **Intradistrict Assignment**: Donor No. 1's donation was made in Alameda County. Accordingly, assignment to the San Francisco or Oakland Division would be appropriate.

PARTIES

10. Kevin Gallagher is a resident of San Francisco, California.

11. Donor No. 1 is a resident of this judicial district who made an anonymous donation from within this judicial district to support the legal defense of a jailed journalist.

12. Pursuant to 18 U.S.C. § 2712 and 28 U.S.C. § 2675, Mr. Gallagher and Donor No. 1 filed administrative claims with the Department of Justice ("DOJ") and the Federal Bureau of Investigation ("FBI") on or about March 30, 2016. To date, their claims are unanswered.

13. Donor No. 1 satisfies the requirements to sue anonymously. In the Ninth Circuit, plaintiffs may proceed anonymously where the "need for anonymity outweighs prejudice to the opposing party and the public's interest in knowing the party's identity." *Does I – XXIII v. Advanced Textile Corp.*, 214 F.3d 1058, 1068 (9th Cir. 2000). This test is satisfied where, as here, "the injury litigated against would be incurred as a

1 result of the disclosure of the plaintiff's identity." *Doe v. Frank*, 951 F.2d 320, 324 (11th
2 Cir. 1992). Donor No. 1 made an anonymous donation to the Free Barrett Brown legal
3 defense fund. This suit seeks to protect Donor No. 1's right to remain anonymous while
4 doing so, a right long recognized as a necessary corollary of the First Amendment. *See*
5 *NAACP v. Alabama*, 357 U.S. 449 (1958). Revealing the name of Donor No. 1 would
6 cause the very injury this suit seeks to redress.

7 14. At all times relevant to this action, defendant Candina Heath was a
8 citizen of Texas who worked for the Department of Justice ("DOJ") where she was an
9 Assistant United States Attorney in the Northern District of Texas. Donor No. 1 sues Ms.
10 Heath in her individual capacity.

11 15. At all times relevant to this action, defendant Robert Smith was a
12 citizen of Texas, where he was a Special Agent in the Dallas office of the FBI. Donor No.
13 1 sues Agent Smith in his individual capacity.

14 16. Plaintiffs sue the United States pursuant to 18 U.S.C. § 2712.

15 17. Plaintiffs are ignorant of the true names and capacities of the
16 Defendants sued as Does 1-10 and therefore sue such Defendants under fictitious names.
17 Plaintiffs will seek leave to amend this Complaint to allege the true names and capacities
18 of Does 1-10 when their true names and capacities have been ascertained. On information
19 and belief, Does 1-10 are legally responsible in some manner for the events described in
20 this Complaint, and for the damages suffered by Plaintiffs and the donors to Free Barrett
21 Brown. At all relevant times, Does 1-10 acted as agents, servants, and/or employees of the
22 named defendants.

23 **FACTUAL BACKGROUND**

24 18. Since Edward Snowden revealed the National Security Agency's
25 secret surveillance program, Americans have become more aware of the United States
26 government's indiscriminate monitoring of American citizens. This newfound knowledge
27 has been made possible by journalists and activists seeking to hold the government
28 accountable for its surveillance activities. One of these individuals is Barrett Brown, a

1 journalist who has reported extensively on the links between the United States government
2 and private intelligence contractors.

3 19. Various groups of computer hackers have also attacked these private
4 intelligence firms and exposed their data and internal communications. The hack of one
5 such firm, Strategic Forecasting, Inc. (“Stratfor”), was coordinated by an FBI informant
6 and carried out by Jeremy Hammond.¹ The informant, Hector Xavier Monsegur, provided
7 Mr. Hammond with information about the vulnerability of Stratfor’s systems. At that time,
8 the FBI had Mr. Monsegur under comprehensive surveillance. On information and belief,
9 the FBI was aware that Mr. Monsegur was coordinating the Stratfor hack before it
10 occurred, and could have prevented it. The FBI elected not to prevent the hack because it
11 wanted to use Stratfor as bait to go after Mr. Hammond, one of the most prominent
12 members of Anonymous, a loose affiliation of computer hackers and activists. The
13 Stratfor hack produced millions of emails which contained, among other things, thousands
14 of credit card numbers and authentication features. One former FBI agent characterized
15 the government’s conduct as follows: “I am concerned in this case that the FBI seemed
16 more interested in inflating the potential charges rather than mitigating the potential harm
17 to innocents.”²

18 20. In December of 2011, Mr. Brown transferred a link to a file
19 containing credit card information from one public chatroom to another. The FBI, anxious
20 to conceal its involvement in the hack, cracked down hard.

21 21. In early 2012, agents of the FBI, led by Agent Smith, executed a
22 search warrant at the home of Mr. Brown’s mother.

23 22. This greatly upset Mr. Brown, who posted three videos on
24 www.youtube.com and several statements on www.twitter.com that threatened Agent
25

26 ¹ <http://www.dailydot.com/politics/hammond-sabu-fbi-stratfor-hack/>

27 ² *Id.*
28

1 Smith. Shortly thereafter, Mr. Brown was indicted for those statements and for copying
2 and pasting the link to the hacked documents between chat rooms. Among other things,
3 Mr. Brown was charged with internet threats, retaliation against a federal law enforcement
4 officer, and aggravated identity theft. At one point, he faced over 100 years in prison. For
5 purposes of comparison, Jeremy Hammond, the hacker who unlawfully accessed and
6 initially posted the documents, faced a maximum penalty of ten years in prison for his
7 crimes.

8 23. News of Mr. Brown's arrest spread amongst free speech and free
9 press advocates. As the charges piled up, mainstream media picked up on the story. The
10 details of Mr. Brown's arrest, and the charges he faced, eventually reached Kevin
11 Gallagher, a computer systems administrator.

12 24. After learning of the severity of the sentence Mr. Brown faced, Mr.
13 Gallagher started a crowd-funding campaign called Free Barrett Brown to raise funds to
14 provide a private defense for Mr. Brown. Mr. Gallagher used WePay to set up the
15 campaign. At that time, WePay's website advertised that it provided "everything you need
16 to engage donors and accept donations."³ Once a webpage was created, WePay helped
17 users like Mr. Gallagher accept donations and publicize their causes through social media
18 and Google searches. It also provided a record keeping service that helped users thank
19 donors. In exchange for these services, WePay took a percentage of each donation
20 received.

21 25. Individuals, including Donor No. 1, donated over \$40,000.00 to Free
22 Barrett Brown through the page Mr. Gallagher created, [www.wepay.com/donations/free-](http://www.wepay.com/donations/free-barrett-brown)
23 [barrett-brown](http://www.wepay.com/donations/free-barrett-brown). The donors provided WePay with their bank account or credit card
24 information to complete these transactions. In the course of making their donations,
25 WePay also offered donors the option to include a message. Many donors took advantage
26 of this to send Mr. Brown messages of support such as:

27 _____
28 ³ WePay has since discontinued this aspect of its service.

- 1 - “the American people vitally need to know what their employees are doing,
- 2 not the other way around!”
- 3 - “prosecutorial bludgeoning must end”;
- 4 - “I stand with Barrett Brown and against oppressive U.S. government
- 5 prosecution of journalists”; and
- 6 - “I think it is imperative that everyone who cares about free speech, a free
- 7 internet, or is horrified by prosecutorial overreach, donate to Barrett Brown’s
- 8 legal defense.”

9 26. The First Amendment protects the donors’ right to send these
 10 donations and messages, and it protects their right to remain anonymous while doing so.
 11 Cognizant of the particularly sensitive nature of the cause for which he was soliciting
 12 donations, Mr. Gallagher took every effort to maintain the anonymity of the donors to Free
 13 Barrett Brown. He informed the donors via the donation page that “[w]hat information
 14 you choose to provide will be kept strictly confidential.”

15 27. Shortly after it began, the Free Barrett Brown campaign attracted the
 16 attention of the DOJ and the FBI, and Defendants began their illegal monitoring program.
 17 Once Agent Smith learned that Mr. Brown was receiving support via the Free Barrett
 18 Brown crowd-funding campaign, he enlisted the help of Ms. Heath and the two of them
 19 began efforts to identify and surveil Mr. Brown’s financial supporters.

20 28. On information and belief, Defendants conspired to draft and serve
 21 the WePay Subpoena, which was part of a larger scheme to unlawfully identify, target, and
 22 surveil supporters of Mr. Brown. As part of the illegal surveillance scheme, Defendants
 23 also sent a subpoena to the web-hosting company CloudFlare, Inc. One media outlet
 24 characterized the use of Mr. Brown’s trial to seek information from such sources as “a
 25 remarkable fishing expedition.”⁴ On information and belief, the unlawful surveillance

26 ⁴ [http://www.crikey.com.au/2013/04/05/reveal-the-truth-about-cybersecurity-face-the-](http://www.crikey.com.au/2013/04/05/reveal-the-truth-about-cybersecurity-face-the-wrath-of-the-us/)
 27 [wrath-of-the-us/](http://www.crikey.com.au/2013/04/05/reveal-the-truth-about-cybersecurity-face-the-wrath-of-the-us/)
 28

1 scheme also sought information from, among other sources, social media websites,
2 payment processing companies, financial institutions, and other crowd-funding websites in
3 order to identify and obtain as much information as possible about Mr. Brown's
4 supporters. Donor No. 1 believes this scheme was initiated to harass the donors and
5 retaliate against them for the donors' exercise of protected conduct – making anonymous
6 donations in support of Mr. Brown's legal defense. Donor No. 1 also believes this scheme
7 continues today and that the information gained from the WePay Subpoena, and others like
8 it, is currently being used to monitor Mr. Brown's supporters. Defendants' conduct has a
9 chilling effect on protected First Amendment activity.

10 29. Mr. Gallagher first suspected that Defendants might have been
11 illegally monitoring protected communications between himself and the donors when he
12 obtained email correspondence that suggested that Ms. Heath had obtained sensitive, non-
13 public information regarding the creation of, and donations made to, the Free Barrett
14 Brown crowd-funding campaign.

15 30. Mr. Gallagher investigated whether any sensitive, non-public
16 information was improperly disclosed. During the investigation, counsel for Mr. Gallagher
17 received a letter from counsel for WePay confirming that WePay received the WePay
18 Subpoena and produced documents in response. Then, counsel for WePay produced the
19 WePay Subpoena, which sought "any and all information" regarding the campaign,
20 including sensitive personal and financial information of the donors and the complete
21 transaction history. In other words, the WePay Subpoena requested the identities of, and
22 the amounts of donations made by, the donors to Free Barrett Brown in direct violation of
23 the donors' First Amendment right to make these donations anonymously. The WePay
24 Subpoena's broad scope also encompassed the messages the donors sent to Mr. Brown.

25 31. The WePay Subpoena indicated that the information it requested
26 would be used in the trial of Barrett Brown. Oddly enough, however, instead of asking
27 WePay to send its response directly to Ms. Heath, the prosecutor, or to lodge its response
28 with the court, the WePay Subpoena compelled WePay to produce information directly to

1 Agent Smith of the FBI. This renders the WePay Subpoena improper under Federal Rule
 2 of Criminal Procedure 17(c). It also demonstrates that Defendants' claimed purpose of
 3 using the information produced in response to the WePay Subpoena at Barrett Brown's
 4 trial was purely pretextual. The true goal of the WePay Subpoena, rather, was to facilitate
 5 the unlawful surveillance of the anonymous donors to the crowd-funding campaign.

6 32. Upon discovering that the WePay Subpoena was unlawful, Mr.
 7 Gallagher informed the donors. Donor No. 1 was alarmed to learn that his government
 8 illegally surveilled his donation. Donor No. 1 does not publicize his financial activities
 9 and always ensures that any donations he makes are kept private.

10 CLASS ACTION ALLEGATIONS

11 (as to Donor No. 1's claims)

12 33. For the First Amendment claim, Donor No. 1 proposes to certify a
 13 class of all United States citizens who made anonymous donations to the Free Barrett
 14 Brown campaign.

15 34. For the Stored Communications Act claim, Donor No. 1 proposes to
 16 certify a class of all United States citizens who made donations to the Free Barrett Brown
 17 campaign.

18 35. For the California constitutional right to privacy claim, Donor No. 1
 19 proposes to certify a class of all California citizens who made anonymous donations to the
 20 Free Barret Brown campaign.

21 36. Excluded from the classes are: Ms. Heath and Agent Smith, and each
 22 of their agents and legal representatives. Also excluded are the judge and staff to whom
 23 this case is assigned, and the judge's immediate family.

24 37. These classes satisfy the requirements of Fed. R. Civ. Proc. 23(a):

25 a. **Numerosity:** hundreds of individuals from around the United
 26 States donated over \$40,000.00 to Free Barrett Brown, mostly in small amounts.
 27 On information and belief, all of these individuals are affected by the improper
 28 surveillance activities alleged. The number of donors alone would make joinder

1 impractical, but a class action is a particularly appropriate vehicle given that the
 2 donations were anonymous. It would make little sense to require donors to come
 3 forward individually, and publicly, to assert their right to remain anonymous.

4 b. **Commonality:** virtually all questions of law and fact are
 5 common to the class. The most important are whether the WePay Subpoena, and
 6 any other improper requests for information, violate the donors' constitutional and
 7 statutory rights. Other common questions include:
 8

9 (1) whether the WePay Subpoena sought information
 10 irrelevant to the prosecution of Mr. Brown;

11 (2) whether the WePay Subpoena was procedurally
 12 defective under Fed. R. Crim. Proc. 17(c);

13 (3) whether Ms. Heath and Mr. Smith needed a search
 14 warrant to obtain the information requested by the WePay Subpoena;

15 (4) whether Ms. Heath and Mr. Smith were required to
 16 notify the donors prior to sending the WePay Subpoena and whether they did
 17 so; and

18 (5) whether Ms. Heath and Agent Smith conspired to
 19 unlawfully surveil Mr. Brown's supporters for improper reasons.

20 c. **Typicality:** Donor No. 1 suffered invasions of his First
 21 Amendment right to speak and associate anonymously, his California constitutional
 22 right to privacy, and his rights under the Stored Communications Act. These are the
 23 same injuries suffered by the rest of the classes. He seeks redress of the same
 24 conduct under the same legal theories.

25 d. **Adequacy:** Donor No. 1 is an adequate class representative
 26 because he has the same interests as the rest of the donors and is prepared to serve
 27 as their fiduciary. Donor No. 1's counsel have ample First Amendment and class
 28 action litigation experience.

1 38. This action may be certified as a class action under both Fed. R. Civ.
2 Proc. 23(b)(2) & (3).

3 39. **Fed. R. Civ. Proc. 23(b)(2):** Defendants' conduct applies to all
4 donors in the class. Further, Donor No. 1 seeks declaratory and injunctive relief that
5 would apply with equal force class-wide.

6 40. **Fed. R. Civ. Proc. 23(b)(3):** Common questions predominate and a
7 class action is a superior method of resolution.

8 a. **Predominance of Common Questions:** nearly all questions
9 are common, including:

10 (1) whether Ms. Heath and Agent Smith engaged in a
11 conspiracy to unlawfully surveil the donors who contributed to Free Barret
12 Brown;

13 (2) whether such conspiracy violated the donors'
14 constitutional and statutory rights;

15 (3) whether Ms. Heath and Mr. Smith needed a search
16 warrant to obtain the information requested by the WePay Subpoena;

17 (4) whether Ms. Heath and Mr. Smith were required to
18 notify the donors prior to sending the WePay Subpoena and whether they did
19 so;

20 (5) whether the WePay Subpoena requested information
21 that was relevant to the crimes Mr. Brown was accused of; and

22 (6) whether there is a valid justification for the WePay
23 Subpoena beyond a desire to unlawfully surveil Mr. Brown's supporters.

24 b. **Superiority of Class Action:** a class action is particularly
25 appropriate in this circumstance because aggrieved donors may be hesitant to
26 vindicate their rights on an individual basis for fear of government retaliation. The
27 class action vehicle allows individual rights to be vindicated while the individuals
28 remain anonymous, as they were when they made their donations, and as they

1 should have remained. Further, proceeding as a class action will save time and
2 judicial resources.

3 **FIRST CLAIM FOR RELIEF – VIOLATION OF THE FIRST AMENDMENT**

4 **RIGHT TO SPEAK AND ASSOCIATE ANONYMOUSLY**

5 **(Donor No. 1 and the Class Against Defendants Heath and Smith)**

6 41. Donor No. 1 incorporates each of the allegations set forth above into
7 this claim for relief.

8 42. Defendants acted under color of law by serving the WePay Subpoena.
9 The WePay Subpoena's bald assertion that the information it requested would be used at
10 Mr. Brown's trial, without any indication or evidence of a connection to the crimes Mr.
11 Brown was charged with, demonstrates the complete lack of relevance of the information
12 requested. The WePay Subpoena's true purpose was to gather information regarding the
13 donors. When WePay produced documents in response, the violation was complete.
14 Because Defendants had no cause to suspect wrongdoing by the donors, and thus could not
15 otherwise obtain information about the donors legally, they used the trial of Mr. Brown,
16 and the WePay Subpoena, as an illegal work-around.

17 43. The donations were acts of political expression, showing the donors'
18 frustrations with what they perceived to be government bullying and prosecutorial
19 overreach. Donations made in support of litigation are protected by the First Amendment.
20 The donors violated no law by sending money to support Mr. Brown's legal defense, and
21 instead were exercising their constitutionally protected rights. Thus, Defendants'
22 surveillance of the donors was unlawful.

23 44. Since the WePay Subpoena sought information that was irrelevant to
24 the charges brought against Mr. Brown, Donor No. 1 believes the WePay Subpoena was
25 sent to retaliate against the donors' exercise of protected conduct in violation of their First
26 Amendment right to anonymous speech and association, and to deter further protected
27 expression. Defendants never intended to allow the information subpoenaed from WePay
28 to see the inside of Mr. Brown's courtroom. Donor No. 1 believes Defendants maintain

1 and continue to use the information produced in response to the WePay Subpoena, as well
 2 as other information gathered from the illegal monitoring program, to continually and
 3 unjustifiably surveil the donors to Free Barrett Brown.

4 **SECOND CLAIM FOR RELIEF – VIOLATION OF**
 5 **THE STORED COMMUNICATIONS ACT**

6 **(Kevin Gallagher, Donor No. 1, and the Class Against the United States)**

7 45. Plaintiffs incorporate each of the allegations set forth above into this
 8 claim for relief.

9 46. The Stored Communications Act (“SCA”) provides that government
 10 entities must obtain a warrant to compel the disclosure of the contents of electronic
 11 communications that are less than 180 days old from electronic communication service
 12 providers. 18 U.S.C. § 2703(a).

13 47. Government entities may require the disclosure of contents of
 14 electronic communications that are more than 180 days old with a subpoena only if prior
 15 notice is given to the customer or subscriber. 18 U.S.C. § 2703(b).

16 48. An “electronic communication” is “any transfer of signs, signals,
 17 writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part
 18 by a wire, radio, electromagnetic, photoelectronic, or photooptical system that affects
 19 interstate or foreign commerce[.]” 18 U.S.C. § 2510(12).

20 49. The “contents” of “electronic communications” include “any
 21 information concerning the substance, purport, or meaning of that communication.” 18
 22 U.S.C. § 2510(8).

23 50. During the relevant time period, WePay ran a crowd-funding service
 24 that allowed users to create webpages geared towards soliciting donations in support of
 25 certain causes. Users could publicize the webpage they created, donors could make
 26 contributions, and WePay would take a commission for processing each transaction.

27 51. The webpage Mr. Gallagher created using WePay’s service allowed
 28 him to reach out to potential donors to Mr. Brown’s legal defense fund and process their

1 donations by electronic means. The anonymous donors used WePay's service to donate
 2 money and send messages of support to Mr. Brown, such as "Hang in there Mr. Brown,
 3 there are people rooting for you" and "Thank you for your integrity and fight for freedom."

4 52. The donations, and the messages of support, encompass the contents
 5 of electronic communications as defined by the SCA.

6 53. On information and belief, neither the FBI nor the DOJ used a search
 7 warrant to compel WePay to disclose its records relating to the crowd-funding campaign.

8 54. Neither Mr. Gallagher nor Donor No. 1 received prior notice of the
 9 WePay Subpoena. On information and belief, neither did any of the anonymous donors.

10 55. Finally, the WePay Subpoena seeks information beyond the SCA's
 11 narrow and carefully circumscribed exception for requesting records without a search
 12 warrant or notice to the affected users.

13 **THIRD CLAIM FOR RELIEF – VIOLATION OF THE RIGHT TO PRIVACY**

14 **UNDER THE CALIFORNIA CONSTITUTION**

15 **(Donor No. 1 And Subclass Against All Defendants)**

16 56. The surveillance program also violated Donor No. 1's right of privacy
 17 set out in Article 1, Section 1 of the California Constitution. Donor No. 1 brings this claim
 18 on behalf of a subclass of donors who are California citizens. If discovery demonstrates
 19 that donors from other states with constitutional privacy protections were ensnared in
 20 Defendants' surveillance program, Donor No. 1 will seek leave to amend his complaint to
 21 bring claims on their behalf as well. States with applicable constitutional privacy
 22 protections include, without limitation, Alaska (Art. I, § 22), Arizona (Art. II, § 8), Florida
 23 (Art. I, § 23), Hawaii (Art. I, § 6), Illinois (Art. I, §6), Louisiana (Art. I, § 5), Montana
 24 (Art. II, § 10), South Carolina (Art. I, § 10), and Washington (Art. I, § 7).

25 57. California's constitutional right to privacy protects against serious
 26 invasions of legally protected privacy interests provided there is a reasonable expectation
 27 of privacy.

1 **THIRD CAUSE OF ACTION:**

2 A. Declaring that the conduct alleged above violated the California
3 constitutional right to privacy;

4 B. Awarding Donor No. 1 and the subclass damages according to proof at trial;

5 C. Awarding Donor No. 1 the costs, including reasonable attorney's fees,
6 associated with bringing this action; and

7 D. Any other relief the Court deems proper.

8 **DEMAND FOR JURY TRIAL**

9 Donor No. 1 demands a jury trial on the first and third causes of action.

10
11 Dated: February 6, 2017

Respectfully submitted,

12 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

13
14 By



15 CHARLES S. DONOVAN
16 GUYLYN CUMMINS
17 ERIC J. DiIULIO
18 Attorneys for Plaintiffs
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